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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	No. 81-1235
	)	D.C. No. CR 80-164-1
vs.	)	No. 81-1236
	)	D.C. No. CR
FRANK F. COLACURCIO, Defendant-Appellant.	)	80-164-2
	)	MEMORANDUM
UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	
vs.	)	
KENT D. CHISMAN, Defendant-Appellant.	)	

Argued and Submitted -- April 5, 1982

Decided -- April 28, 1982

Appeal from the United States
District Court for the
Western District of Washington
The Honorable Donald S. Voorhees, Presiding

Before: KILKENNY, HUG and SKOPIL, Circuit Judges.

Colacurcio appeals his conviction for conspiracy to defraud the United States under 18 U.S.C. § 371 and aiding the preparation of false corporate tax returns

under 26 U.S.C. § 7206(2). Chisman appeals his conviction for conspiracy to defraud the United States under 18 U.S.C. § 371 and preparing false corporate tax returns under 26 U.S.C. § 7206(1). We reject their numerous contentions of error and affirm the judgments.

The district court has wide discretion in determining whether evidence is relevant and its decision on admissibility will not be reversed absent an abuse of discretion. United States v. Ford, 632 F.2d 1354, 1377 (9th Cir. 1980), cert. denied, 450 F.2d 934, 101 S.Ct. 1399 (1981).

Colacurcio and Chisman contend that the district court abused its discretion in excluding Colacurcio's personal tax returns because they were relevant evidence that Colacurcio honestly reported money received from the corporations on his tax returns, which made it less probable that he intended to defraud or purposely obstruct the

Government. The appellants contend that Colacurcio's personal tax returns were relevant to show that he believed that he was not obstructing the Government as long as the Government received the total owed to it by him and the corporation.

26 U.S.C. § 7206 prohibits willful falsification of material tax statements, not willful evasion of taxes. United States v. Miller, 545 F.2d 1204, 1211 n.8, 1212 n.10 (9th Cir. 1976), cert. denied, 430 U.S. 930 (1977). The fact that Colacurcio may have honestly paid personal taxes on unreported corporate income has no relevance to whether he willfully assisted in the falsification of a material fact by underreporting the corporate income.

Even assuming that Colacurcio's personal tax returns were marginally relevant to the defense theory, the district court did not abuse its discretion in excluding this evidence. The only basis

for admission of the returns was the state of mind exception to the hearsay rule. Fed. R. Evid. 803(3). Under the state of mind exception, a hearsay statement that is relevant to the issues at trial is admissible if it is contemporaneous and it is made without the chance for reflection. United States v. Ponticelli, 622 F.2d 985, 991 (9th Cir.), cert. denied, 449 U.S. 1016 (1980). Colacurcio's personal tax returns failed to meet both of these requirements. The returns were not made contemporaneously with the events that related to the filing of false corporate tax returns. They were made after Colacurcio knew that his business affairs were under investigation and thus Colacurcio had a chance for reflection and misrepresentation. Moreover, the returns were properly excluded under Fed. R. Evid. 403 because their limited probative value was substantially outweighed by the danger of confusing the issues,

misleading the jury, and wasting time. See United States v. Hendrix, 549 F.2d 1225, 1230 (9th Cir.), cert. denied, 434 U.S. 818 (1977). The probative value of the personal tax returns was very limited because they were prepared in an unreliable manner and there was no relationship between the amounts of gross receipts understated on the corporate tax returns and the amounts of income placed on the personal tax returns.

Appellants argue that the district court erred in excluding the testimony of two witnesses who would have testified that Colacurcio instructed them to maintain proper records for tax purposes. This contention is without merit. Contrary to appellants' contention, the witnesses' proposed testimony was not that Colacurcio instructed them to maintain proper records for tax purposes. Rather, the witnesses would have testified that Colacurcio told

them to keep accurate records of payments made to him as consulting fees so that he could include those fees on his personal tax return. The district court excluded the testimony as irrelevant for essentially the same reasons that it found Colacurcio's personal tax returns inadmissible. The district court did not abuse its discretion in determining that this proposed testimony was irrelevant to the question whether Colacurcio willfully falsified his corporate tax returns. See United States v. Ives, 609 F.2d 930, 933 (9th Cir. 1979), cert, denied, 445 U.S. 919 (1980).

Nor did the district court abuse its discretion in refusing to permit the preparer of Colacurcio's personal tax returns to testify that she believed that the tax information provided to her by Colacurcio was accurate. The tax preparer had no personal knowledge of the reliability or truthworthiness of the figures

applied to her by Colacurcio. Her proposed testimony was thus inadmissible hearsay. Moreover, the trial court, having properly concluded that Colacurcio's personal tax returns were irrelevant to the issues at trial, did not err in determining that the testimony of the tax preparer was also inadmissible. The district court also did not abuse its discretion in concluding that there were insufficient facts in evidence to support the proposed testimony of an expert witness in answer to a hypothetical question about joint ventures. See United States v. Altenburger, 549 F.2d 702, 704 n.2 (9th Cir.), cert. denied, 431 U.S. 923 (1977).

Appellants next contend that the trial court erred by instructing the jury that it need not be concerned with the manner and means section of the indictment but should instead direct its attention to the elements of the conspiracy charge as set forth

in the court's instruction. Appellants assert that this instruction violated their fifth and sixth amendment rights because it removed "an essential element" of the Government's case from the jury's consideration and constituted an impermissible amendment of the indictment issued by the grand jury. This contention is also without merit. The trial court may strike all allegations in a conspiracy indictment that do not consitute essential elements of the Government's proof. United States v. Lyman, 592 F.2d 496, 500-01 (9th Cir. 1978), cert. denied, 442 U.S. 931 (1979). None of the elements of the conspiracy charge were included in the manner and means section of the indictment. The trial court correctly instructed the jury on the necessary elements of the conspiracy charge. Thus, the court's instruction to the jury not to be concerned with the manner and means section of the indictment

did not violate appellants' fifth or sixth amendment rights. Id.

We also reject appellants' contention that the district court's failure to grant immunity to defense witness Pam Dougal deprived them of due process and of their right to compulsory process. The trial court properly declined to grant immunity to Dougal because it concluded that her proposed testimony was not incriminating and, thus, that she did not have the right to invoke her fifth amendment privilege to avoid answering questions by Colacurcio's attorney. The court did offer to compel Dougal's testimony without granting her immunity. Having rejected this offer, appellants cannot now complain that the absence of Dougal's testimony deprived them of a fair trial. Moreover, the record supports the district court's conclusion that Dougal's testimony would have been

cumulative and only marginally relevant to appellants' defense. See United States v. Carman, 577 F.2d 556, 561 (9th Cir. 1978).

Appellants further contend that the trial court abused its discretion by limiting the cross-examination of Government witness Jerome Belcher regarding his alleged misconduct. We disagree. The court's ruling that cross-examination of Belcher would be deferred until the defense had presented some evidence of Belcher's misconduct was proper. See Skinner v. Cardwell, 564 F.2d 1381, 1388-89 (9th Cir. 1977), cert. denied, 435 U.S. 1009 (1978).

Finally, we find each of appellant Chisman's separate contentions to be without merit. The testimony by a Government witness that she was informed by Government witness Gilbert Pauole that Colacurcio was "the boss" was properly

admitted to impeach Pauole's prior testimony denying that he made the statement. Fed. R. Evid. 607; see United States v. DeLillo, 620 F.2d 939, 946-47 (2d Cir.), cert. denied, 449 U.S. 835 (1980).

The admission of testimony concerning Colacurcio's business activities did not violate Bruton v. United States, 391 U.S. 123 (1968). Bruton forbids only the introduction of a nontestifying codefendant's confession implicating the other defendant. None of the testimony objected to by Chisman falls within Bruton's prohibitions.

The trial court did not err in refusing to give a jury instruction based upon United States v. Garber, 607 F.2d 92, 97-98 (5th Cir. 1979). The Garber instruction is proper when a defendant is charged with tax evasions under 26 U.S.C. § 7201. Chisman was not charged with a violation of

section 7201. He was charged with filing a false tax return in violation of 26 U.S.C. § 7206. The court's instruction adequately explained the elements of a violation of 26 U.S.C. § 7206. This is all the instruction need do. United States v. Kenny, 645 F.2d 1323, 1337 (9th Cir.), cert. denied, 452 U.S. 920, 101 S.Ct. 3059, 69 L.Ed.2d 425 (1981).

The convictions are AFFIRMED.

APPENDIX B

Filed
Jun 10 1982
Phillip B. Winberry
Clerk, U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. FRANK F. COLACURCIO, Defendant-Appellant.	No. 81-1235 D.C. No. CR 80-164-1
UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. KENT D. CHISMAN, Defendant-Appellant.	No. 81-1236 D.C. No. CR 80-164-2 ORDER

Appeal from the United States District Court for the Western District of Washington

Before: KILKENNY, HUG and SKOPIL, Circuit Judges.

The panel as constituted in the above case has voted to amend the unpublished memorandum disposition in this case as follows:

On page 3, line 14 of the unpublished Memorandum decision in this case, which was argued and submitted on April 5, 1982 and decided on April 28, 1982, the word "the" is substituted for the word "his."

APPENDIX C

Filed by the
United States District Court
Western District of Washington
April 9 1981
BRUCE RIFKIN, Clerk
By _____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff,	
v.	NO. CR80-164V
FRANK F. COLACURCIO, Defendant.	JUDGMENT AND COMMITMENT

On this 3rd day of April, 1981, came the attorney for the Government and the defendant appeared in person, and with counsel, William Helsell.

IT IS ADJUDGED that the defendant upon his pleas of NOT GUILTY and jury verdicts of GUILTY has been convicted of the offenses of a violation of Title 18, United States Code, Section 371, conspiracy, as charged in Count I, and violations of Title 26, United States Code, Section 7206(2),

assisting in preparing false tax returns, as charged in Counts II and IV of the Second Superseding Indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED as to Count I that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FOUR (4) YEARS and fined the sum of TEN THOUSAND DOLLARS ($10,000.00).

IT IS ADJUDGED as to Count II that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS and fined

the sum of FIVE THOUSAND DOLLARS ($5,000.00).

IT IS ADJUDGED as to Count IV that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS and fined the sum of FIVE THOUSAND DOLLARS ($5,000.00). The execution of the sentence on Count IV as to imprisonment only is suspended and the defendant placed on probation for a period of FIVE (5) YEARS, upon the following terms and conditions:

1. That he obey all local, state and federal laws;

2. That he comply with the rules and regulations of the Probation Department.

IT IS ORDERED that the term of imprisonment imposed on Count I shall run concurrently with the term of imprisonment on Count II and that the period of probation imposed on Count IV shall commence upon the

defendant's release from the imprisonment imposed on Counts I and II.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as to the commitment of the defendant.

Presented by:

/s/
KENNETH R. PARKER
ASSISTANT UNITED
STATES ATTORNEY

/s/
UNITED STATES
DISTRICT JUDGE

CLERK

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. FRANK F. COLACURCIO and KENT D. CHISMAN, Defendants.	NO. CR80-164V SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNT I

Beginning at an exact time unknown, but prior to April 1977, and continuing up through at least July 1980, FRANK F. COLACURCIO and KENT D. CHISMAN, within the Western District of Washington, did conspire with each other to defraud the United States by filing and causing to be filed Federal income tax returns for Reeb, Inc. and the Federal Way Tavern Corporation, which understated the gross receipts which had been generated by the operation of the

Bavarian Gardens and the Brass Tiger, topless go-go taverns in King County, Washington, and by impeding, impairing, obstructing, and defeating the lawful functions of the Department of the Treasury in the collection of the revenue.

All in violation of Title 18, United States Code, Section 371.

Manner and Means

1. It was part of the conspiracy that FRANK F. COLACURCIO would hide his ownership interest in the Bavarian Gardens and Brass Tiger by having KENT D. CHISMAN appear as the sole stockholder of Reeb, Inc. and Federal Way Tavern Corporation on filings with the Washington State Liquor Control Board.

2. It was part of the conspiracy that KENT D. CHISMAN would act as owner/manager of the Bavarian Gardens and the Brass Tiger in dealing with the Washington State Liquor

Board, but that he would not exercise sole managerial authority over the Bavarian Gardens and the Brass Tiger.

3. It was part of the conspiracy that FRANK F. COLACURCIO would instruct the actual managers of the Bavarian Gardens and Brass Tiger to report to him and not to follow instructions from KENT D. CHISMAN.

4. It was part of the conspiracy that actual managers of the Bavarian Gardens and the Brass Tiger would be instructed not to let anyone else learn the true gross receipts of the taverns. The managers of the taverns would secretly "ring out" the cash register, fill out accounting forms reflecting the receipts, and deliver the receipts and the forms directly to FRANK F. COLACURCIO.

5. It was part of the conspiracy that FRANK F. COLACURCIO and KENT D. CHISMAN would remove some of the gross receipts of the Bavarian Gardens and the Brass Tiger

and retain or distribute the receipts without accounting for the money.

6. It was part of the conspiracy that FRANK F. COLACURCIO and KENT D. CHISMAN would prepare new accounting forms reflecting lower gross receipts for the Bavarian Gardens and the Brass Tiger, and forward these altered forms to various bookkeepers and accountants so that Federal income tax returns could be prepared.

7. It was part of the conspiracy that FRANK F. COLACURCIO would pay managers secret cash "bonuses" which were not reported as tavern expenses, nor was income tax withheld from the payments.

8. It was part of the conspiracy that various bookkeepers and accountants would unknowingly prepare accounting records and tax returns for Reeb, Inc. and the Federal Way Tavern Corporation which were false.

9. It was part of the conspiracy that KENT D. CHISMAN would sign the tax returns

as President of Reeb, Inc. and Federal Way Tavern Corporation, knowing the returns to be false.

Overt Acts

In furtherance of the above-described conspiracy, the following overt acts were committed:

1. On or about January 9, 1976, KENT D. CHISMAN applied for a transfer of the Washington State Liquor license for the Bavarian Gardens to Reeb, Inc., and, in conjunction with that application, represented that he was the sole owner of Reeb, Inc.

2. On or about October 15, 1977, FRANK F. COLACURCIO prepared a "daily sheet" for the Bavarian Gardens which understated the receipts for October 14, 1977 by $249.00.

3. On or about November 14, 1977, KENT D. CHISMAN applied for a transfer of

the Washington State Liquor license for the Federal Way Tavern Corporation, d/b/a Brass Tiger, and, in conjunction with that application, represented that he was the sole owner of that business, that he had the sole financial interest in that business, and that he had not received any loan or money from other sources in the acquisition of or operation of that business.

4. On or about January 25, 1978, FRANK F. COLACURCIO and KENT D. CHISMAN discussed the remodeling for and changes at the Brass Tiger.

5. On or about March 3, 1978, KENT D. CHISMAN and FRANK F. COLACURCIO discussed business matters for the Brass Tiger.

6. On or about March 31, 1978, FRANK F. COLACURCIO exercised ownership control over the Bavarian Gardens in that he told Gilbert Pauole, then manager of the Bavarian Gardens, where to buy light bulbs for the tavern and how much to pay.

7. On or about February 4, 1978, KENT D. CHISMAN assisted in the preparation of a weekly income summary sheet which reflected the gross receipts for the Brass Tiger for the week of February 1 through February 4, 1978.

8. On or about April 3, 1978, FRANK F. COLACURCIO exercised ownership control over the Bavarian Gardens in that he told Gilbert Pauole, then manager of the Bavarian Gardens, to take money out of a bartender's wages if past shortages continued.

9. On or about April 25, 1978, FRANK F. COLACURCIO prepared a "daily sheet" for the Bavarian Gardens which understated the receipts for April 24, 1978 by $379.30.

10. On or about March 20, 1979, KENT D. CHISMAN prepared a "daily sheet" for the Bavarian Gardens which understated the receipts for March 19, 1979 by $168.00.

11. On or about June 19, 1978, the corporate income tax return for Reeb, Inc.

for tax year April 1, 1977 through March 31, 1978 was filed.

12. On or about February 27, 1980, the corporate income tax return for Reeb, Inc. for tax year April 1, 1978 through March 31, 1979 was filed.

13. On or about June 12, 1980, the corporate income tax return for the Federal Way Tavern Corporation for the tax year January 1, 1979 through December 31, 1979 was filed.

14. On or about July 28, 1980, the combined excise tax return for the State of Washington Department Revenue for the Federal Way Tavern Corporation, d/b/a Brass Tiger, was filed.

COUNT II

On or about June 19, 1978, within the Western District of Washington, FRANK F. COLACURCIO, a resident of Seattle, did willfully and knowingly aid and assist in

the preparation and presentation to the Internal Revenue Service of the corporate tax return (Form 1120) for tax year April 1, 1977 through March 31, 1978 for Reeb, Inc., which was false and fraudulent as to a material matter, in that the return set forth that the gross receipts for the Bavarian Gardens during the tax year were $192,159.00, whereas, as the defendant then knew and believed, the gross receipts for the Bavarian Gardens during the tax year in question were substantially in excess of the amount reported.

All in violation of Title 26, United States Code, Section 7206(2).

COUNT III

On or about June 19, 1978, within the Western District of Washington, KENT D. CHISMAN, a resident of Bellevue, did willfully and knowingly make and subscribe a corporate income tax return (Form 1120)

for tax year April 1, 1977 through March 31, 1978 for Reeb, Inc., which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which income tax return he did not believe to be true and correct as to every material matter in that the tax return reported gross receipts for the Bavarian Gardens during the tax year were $192,159.00. whereas, as he then and there well knew and believed, the Bavarian Gardens had gross receipts substantially in excess of the amount reported.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT IV

On or about February 27, 1980, within the Western District of Washington, FRANK F. COLACURCIO, a resident of Seattle, did willfully and knowingly aid and assist

in the preparation and presentation to the Internal Revenue Service of the corporate tax return (Form 1120) for tax year April 1, 1978 through March 31, 1979 for Reeb, Inc., which was false and fraudulent as to a material matter, in that the return set forth that the gross receipts for the Bavarian Gardens during the tax year were $232,406.00, whereas, as the defendant then knew and believed, the gross receipts for the Bavarian Gardens during the tax year in question were substantially in excess of the amount reported.

All in violation of Title 26, United States Code, Section 7206(2).

COUNT V

On or about February 27, 1980, within the Western District of Washington, KENT D. CHISMAN, a resident of Bellevue, did willfully and knowingly make and subscribe a corporate income tax return (Form 1120) for tax year April 1, 1978 through March

31, 1979 for Reeb, Inc., which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which income tax return he did not believe to be true and correct as to every material matter in that the tax return reported gross receipts for the Bavarian Gardens during the tax year were $232,406.00, whereas, as he then and there well knew and believed, the Bavarian Gardens had gross receipts substantially in excess of the amount reported.

All in violation of Title 26, United States Code, Section 7206(1).

A TRUE BILL:
DATED: DEC 2-1980

RICHARD J. MALLOY
Foreperson

/s/
JOHN C. MERKEL
United States Attorney

/s/
KENNETH R. PARKER
Assistant United States Attorney

APPENDIX E

FILED JUL 2 1982
PHILLIP B. WINSBERRY
CLERK COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. FRANK F. COLACURCIO, Defendant-Appellant.	)	No. 81-1235 D.C. NO. CR 80-164-1
UNITED STATES OF AMERICA, Plaintiff-Appellee, v. KENT D. CHISMAN, Defendant-Appellant.	)	No. 81-1236 D.C. NO. CR 80-164-2 ORDER

Appeal from the United States
District Court for the
Western District of Washington

Before: KILKENNY, HUG and SKOPIL, Circuit Judges

The panel as constituted in the above case has voted to deny the petitions for rehearing and to reject the suggestions for rehearing en banc.

The full court has been advised of the suggestions for en banc rehearing, and no judge of the court has requested a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The petitions for rehearing are denied and the suggestions for rehearing en banc are rejected.

a manner which was just not the way things happended.

THE COURT: Then let's hear the offer of proof.

MR. HELSELL: Your Honor, we offer to prove through Pam Dougal that she is now 35 --

THE COURT: I am getting all this noise back here again, so let me just -- I will sit right here.

MR. HELSELL: She is now 35 or 36, I am not exactly sure which. She lives out in the North Seattle area, is currently married to James Dougal, a bartender;

That her history in working in topless establishments goes back to the days of the Firelight Restaurant in Seattle where she danced, where she personally did not dance topless, for almost three years from 1966 to '69. In those years the Firelight was being managed by Frank Colacurcio.

She got to know him well then and soon learned he was a man she could take her personal problems to, and did, and he solved one of them in a way for which she's been eternally grateful.

She became a housemother at another establishment that Colacurcio had nothing to do with, as far as she knew, the Magic Inn in 1969, and she would explain on the witness stand what a housemother's duties were then and now in terms of being in charge of the girls who dance in taverns.

She returned to the Firelight as housemother in late 1969 or early 1970 and was the housemother there from that time until 1973.

She then got a job out north, closer to her home, at the Y Tavern which was then owned by a Mr. and Mrs. Dontos. She worked there as a housemother in the 1973-74 time period. After working at the Y she stayed home for a year or so, had a baby, I

believe, was a housewife until she decided she wanted to go back to work.

She had learned, because of her earlier association with the Firelight and people there that another friend, who was Frank Colacurcio's sister, Frances Schmitz, was running an office down near a restaurant and cocktail lounge called the Eight Bells located in the Windsor Hotel in Seattle.

She understood that Frances was somehow in the business of coordinating the assignment of dancers to taverns, topless and otherwise, I think. She went down and asked Frances if she could use some help and got a job in that office which at that time wasn't even called Talents West. She is not exactly clear as to what it was called, but it was a sort of office, as she understood it, for a cooperative group of taverns who used dancers, topless and otherwise, and I understood it from her.

Frank Colacurcio had nothing to do with her decision to ask Frances for a job or with Frances' agreement that she could have one. In the beginning all she got paid was twenty to twenty-five dollars a night for driving girls out to various taverns where they were performing in the so-called amateur contests, as Frances ran the operation and she never knew whether Frances was paying herself a salary. She knew the various taverns that were serviced by the office were paying something, but she really didn't pay much attention to how much because she was not in a management role at that time.

She would say that Frances was a capable administrator and that the office was not only handling dancers who worked in taverns but it even then was dispatching bartenders and waitresses and even managers to places when Frances was running it.

During all of the time she was there while Frances was running it, Frank Colacur[illegible] was "out of town," and as Your Honor knows, she would not say this to the jury, but he was over on McNeil Island.

Before he ever came back to town, she had an argument with Frances about something which escapes me, but in any event, she decided she would not continue to work there and she left.

Then in about August of 1976, she was down in that office and she found a girl named P.J. trying to run it, a girl whose initials were P.J., and that's all she knows her by. P.J. evidenced to her disgust with the lack of compensation and the disorganization and said she was leaving, and suggested that maybe Pam should try to take over this operation.

Pamela again was wanting employment, and having watched Frances running it and believing she had as much ability or more

than Frances, took over the office and organized it, opened a bank account and got a tax number and began to call herself Talents West.

Frank Colacurcio was back in town at the time she decided to take it over, and she probably talked to him about taking over for P.J., but in no sense was she taking over at his direction or even at his suggestion. She regarded herself as a friend of his and him as a friend of hers, and she decided to take it over and run with it and try to make some money on it.

Some of the clubs were badly delinquent on their contributions, which were at that time not all at the $500.00 a month level. She chased down the owners and got them to make up their delinquencies, in most instances, and got the thing on an even keel and began paying herself a salary, which I think was $200.00 a week,

and later $300.00, which she decided upon herself, based solely on what was in the bank after she paid the bills, such as the office, the telephone bills, the advertising expense.

They ran an ad in the paper to the effect that cocktail waitresses and dancers were wanted. They had a telephone number and these girls would call in and she herself would interview them in a way in which she had watched Frances interview them, and she will say proudly she thought she was very successful in this operation and ran a good operation, and she will explain the importance of it as far as the club owners are concerned.

She explains that the group of girls who danced in these places have in their numbers, perhaps, more than the ordinary percentage of bad apples, and if those girls were guilty of misconduct in dancing, there were some rather strict regulations

from the Washington State Liquor Control Board that can cost the tavern owner his license even though he is nowhere around, has no idea they are about to do some lewd thing, and suddenly finds himself facing a substantial suspension, closure or fine because of something a girl did.

She organized a system of file cards that showed what the girls' past employment history had been and whether they were or weren't troublemakers.

When girls were disptached [sic]to a tavern and were said to the tavern owner to be somebody that would be a good dancer, if they didn't behave they were sent right back down to Talents West and she talked to them and decided for herself whether the girl was incorigible [sic]and shouldn't be disptached [sic] anywhere else or whether she should be given another chance.

In this time she was running this operation at the Eight Bells establishment,

Frank, who was back in town, ran his own business affairs out of an office which was downstairs. She did not have any supervision from him, but he was her longtime friend and a man whom she respected, and she will readily agree she asked him for advice about things repeatedly. She didn't always take it, but she had respect for his judgment and she regarded herself as the proprietress of this place.

In that time period she had no idea where Frank Colacurcio got his income or what source of assets or investments it came from. She suspected, but had no indication which would rise to the level of evidence that he might own some taverns or have an interest in them, but she certainly could not see from anything he told her that he did.

She knew he had some real estate investments, apartment houses, in Tacoma. He seemed to be running his affairs from

this one office, and she ran Talents West from an entirely separate office which she operated.

The clubs were subscribers to Talents West; that at the time she had it sort of at its apex, and that's what she thinks at the time she was running it. There was Good Time Charlie's owned by Charlie Puzzo; the Bavarian Garden owned by Kent Chisman; the Y owned by Jack McKibben and later Phil McKibben; the Flame owned and operated by a Mr. and Mrs. Cavaney; the Roadside owned and operated by Mr. and Mrs. Chase; the Alaskan Corral in Yakima owned by a man named Moriarity.

She had them at the level of $500.00 a month by way of payment for her services at the time she left, although occasionally one or the other them [sic] would be delinquent and she would have to chase them down for the money. The operation was,

except for her own compensation, non-profit. She just took from revenues what she had after she paid the bills. She was the only person that was making a living out of the operation.

She got tired of running the establishment and decided to leave it, and the girl named Patty Martin, I believe, who was a witness in trial, took over and tried to run it. Patty was totally inexperienced. I think Patty worked with Pam for a while, but Patty really had to rely on Frank Colacurcio for advice and instructions, and after Pam left she knows that Patty was not her own boss in the sense that she was even capable of running the place, and Frank who was always ready and willing to help people, and who responded to Patty Martin's repeated requests for help and advice as to what to do and how to run the thing, began to assume the appearance of sort of the proprietor of it. As far as Pam could

tell, it wasn't because he owned a single piece of furniture in the little office or had any other particular interest in it. He simply was somebody that Patty Martin turned to for advice and help, and got it.

Pam had decided that she knew enough about the business of taverns now so that she would like to own an establishment. She decided that the way to own one was to start as a manager of one and learn the rest of the business from the ground up.

She knew from her Talents West experience that they were having trouble with the manager at the Y Tavern. She asked her friend Frank Colacurcio if he would speak to Jack McKibben, I guess who was then the owner of it, and see if Jack would talk to her about being the manager.

Frank told her on a subsequent day that she should go out and see Jack; that

he thought Jack would hire her. She did go out to see Jack and talked to him, told him about her experience, and Jack did hire her. She became the manager of the Y, I think, in the spring of '77.

Shortly after she became the manager of the Y she heard that Patty Martin was moving out to an office in the Airport Center Building and that Frank was moving out there, too, and she later discovered that Frank and Patty were occupying the same office out at the Airport Center Building, but that the status of Talents West was as I described it most recently.

She figured Patty was the only person on the payroll. Patty didn't know enough to run it all by herself. Frank was in the office; Frank responded freely to Patty's requests for advice and instructions, and soon, sort of by osmosis, it became an operation that Frank was the boss

of, even though he was not being paid for anything.

At the Y, she got there at about the time Phil and Pat McKibben were taking over the operation, if not actually, Jack McKibben was ill and wasn't there much and she says she trained Pat McKibben herself in a lot of things about running a tavern that Pat McKibben had no familiarity with and Pam did. She says proudly she became a roaring success running the Y. She was gaining more money for the McKibbens --

THE COURT: You mean Pam; not Pat?

MR. HELSELL: Yes. Pam.

She used to do things like she would turn in the cash receipts to Phil McKibben; she would put her weekly report with the cash receipts, and she would circle the week's total in red with a by note at the bottom saying, "Look at this! Only a woman could do this. Give me a

raise," and that sort of thing. She was very proud of the way in which she soon became able to run the place, and she soon realized she had a way with employees that no other mangers [sic] that she knew had.

She had more girls dancing at the Y than any other establishment that had topless dancing. She had the nicest girls and she ran a completely clean establishment because she had the cream of the crop.

She soon began to find that Patty at Talents West, or even Frank, were saying "You should send some girls over to the Bavarian Gardens," or "They need girls out at Good Time Charlie's; you've got too many," and while she had no obligation to comply with the request that she send her girls elsewhere, she began to do it. She had too many, and if you have too many, they don't make as much money, so girls

would repeatedly get sent by her on request to other clubs from the Y.

It wasn't because she was ordered to; it was because the Y was a member of this cooperative group that used the services of Talents West, and she felt obliged to comply with the spirit of the thing which was that all members' clubs in that organization who were contributors were entitled to fair treatment and the same share of available go-go dancers and she had more than anybody else.

She says she handled the cash at the Y this way. She did not Z out the register. She did not ring it out and terminate the addition on the tape, but she would empty the till on a daily basis. She would X it out, which means it would show the totals for the day but it would not stop adding, and she would put the totals on a weekly report form that she kept for her own information, and also for consultation

with the McKibbens if she need to consult with them, and occasionally, but not because she was required by the McKibbens or requested by the McKibbens to give them her weekly report, she would leave it with the McKibbens and do things like I just described to Your Honor. She was proud of her results and how the business was picking up.

She took the receipts to the McKibben home on occasion when requested by Mr. McKibben. She took the receipts nowhere on occasion because the McKibbens, either Phil or Pat, would come in and take them from the safe themselves. She took the receipts to the Talents West-McKibben Insurance office when they were down in the Airport Center Building, and when she would arrive there, if Phil were there, she would give them to Phil. If Phil wasn't there, she might give them to Frank and say, "Here are

the Y's receipts," with the understanding that Frank, whom she trusted, would give them to Phil.

She herself had a combination to the safe, but she was slow to have other people know she had it, so the only time she took Y receipts down to the Talents West-McKibben Insurance offices that she would put them in the safe was if nobody but Frank was watching them. She felt she would be a very easy mark and if other people saw her using the safe, it would be a simple thing for somebody to take her hostage and make her open it.

She handled the receipts in the various ways I have described to Your Honor, but she will say she certainly was not delivering Y receipts to Frank Colacurcio because she thought he had any interest in the establishment. She will say that all the time she was managing the Y and handling the receipts in the way I

have described, she was certainly not skimming or anything else. She saw no evidence of any kind that the McKibbens were skimming, and that in her interviews with Government counsel, he has repeatedly said to her that she knows there was skimming going on; the Government can prove there was skimming in these taverns, but one of the things he is claiming she perjured herself about is that she will not admit she knows about a skim. She says over and over again she knows of no skimming and she is not able to provide evidence there was any, and she will not say there was, notwithstanding the efforts of Government counsel to persuade her she must know about it and should tell about it.

Because of her running of the Talents West office herself, even after she got to the Y and when Frank was not around to ask for advice, she would get calls from all kinds of people which were calls where

she was being consulted about matters that were really Talents West matters. If Frank had gone fishing, Patty would call her and ask her questions. Another tavern owner would call her and ask her for advice, ask her for girls directly.

THE COURT: Would you wait just a moment?

MR. HELSELL: It wasn't unusual for her to get a call from a tavern proprietor directly to say, "Could you spare me some dancers? I am down to four."

She says no place can run with a small number of girls. You have to have an adequate supply, and when she could spare dancers, she would ask them to go to a different tavern on a certain occasion, so even though she was no longer the proprietress of Talents West, she was a person to whom other members of it turned for advice, even though Patty was the paid employee and Frank normally did these things when he was

in the office, but when he was gone, she would get the request. She got requests --

THE COURT: Off the record for a moment.

(Discussion off the record.)

MR. HELSELL: She got requests to her for help. It even began involving requests that she go to other taverns and iron out management problems. Out at the Bavarian Garden, for example, they had gone through a series of managers, the place was not making money, was poorly run. Mr. Chisman had acquired it but he did not know how to run a tavern.

THE COURT: Who asked her to go out?

MR. HELSELL: Frank Colacurcio asked her if she would be willing to go over and help out at the Bavarian Garden, and she was directed to Chisman about going out there. Before she went, however, she

recommended that they try a friend of hers, whose name was Irene somebody. Irene was on welfare, but Irene had been a dancer and was a smart girl.

They tried Irene. It didn't work out. They tried a man named Spicer. He didn't work out. They tried another man and he didn't work out. She sent a bartender who had worked at the Y and had trained him, and he didn't work out. She went out herself to try to iron out the mess, and at the same time Junior Pauole was being considered as a potential manager, but Junior had a terrible Hawaiian accent or he would grunt and was not articulate and people couldn't understand his English. She had a heck of a time getting Junior to speak to the girls in a way where they could appreciate while he was telling them what to do.

She stayed a couple of weeks while Junior was trying to learn to run the

tavern. Frank Colacurcio was not out there. Kent Chisman was there, she said, quite frequently, and she at all times understood he was the owner, notwithstanding the fact that Frank Colacurcio was lending a great deal of support and advice and help to him as to how to run the place.

One of the problems Junior had with the girls involved a girl named Cherri, and after Junior was in charge and she, Pam, was back at the Y, Junior was still having trouble with his English and trying to get along with this Cherri, with whom she was having disagreements, used to ask her on more than one occasion to talk to Cherri --

THE COURT: Is this Junior?

MR. HELSELL: Asked Pam to talk to Cherri, and she would do it on the phone. Cherri, of course, is the girls [sic] who appeared here as Linda Kleinfelter. One of the things that Junior complained to her

about and other girls complained her to [sic] about was that Cherri was supposed to be a bartender and was dancing topless in the back of the tavern for certain selected customers at times when she didn't think there was any liquor inspector in sight, because that violated the rules.

She would charge the male customers for whom she danced topless fifteen or twenty dollars. It infuriated the girls who were trying to make a living dancing at tables because, number one, they could not dance topless at tables. They had to dance topless on stage, and every customer that Cherri took to the back for a fifteen dollar dance was a customer they would never get.

She talked to Cherri on the phone about those complaints. Cherri would say "I have to make a living, too," and Cherri would say, "Irene never said anything." She tried to remonstrate with Cherri, tell

her the unfairness of what she was doing as far as the other girls were concerned, without success. She talked to Cherri about the fact that she was ordering too much bottled beer from her boyfriend who worked for the beer company, because Junior complained to her about it and even took her out to show her how much bottled beer Cherri had on inventory in the cooler.

She talked to Cherri about the fact that it was her job to get the money for the bank, if she was the day bartender and another night bartender was coming in who needed the money. Cherri took the position is was Junior's job and that he wasn't doing it.

"Dc you remember saying to Cherri on the phone on one of these occasions, 'Please try to get along with Junior; I can't find Kent,'" meaning I can't find the boss, so try to get along.

In addition to doing this fill-in duty at other taverns, she did fill-in duty at the Talents West office. Frank Colacurcio would go fishing and he wouldn't have confidence in Patty. He would want her around there to handle whatever came up, and asked her to come down and do it, and she did. She was in that office a couple of times a week, anyway, sometimes in some periods as manager of the Y when she was bringing McKibben's money to him down there.

She said she has seen Frank Colacurcio count money on his desk, but never to her knowledge was it money that involved the proceeds of a tavern unless it was money counting sessions with McKibben. Never will she say did she see any episode where he was counting money from the Bavarian Garden or any other tavern, but he did count money on occasion and he used the adding machine.

She says she herself delivered Bavarian Garden receipts to the Talents West office and she did it because she began to live with Junior Pauole. He was running the Bavarian Garden; she was running the Y. Junior would be sick a day or more than a day and he would ask her to go over and get the receipts and take them over to the office. She understood she was taking them over for Mr. Chisman, not for Mr. Colacurcio, but she would take them in and deliver them in exactly the same fashion I have talked about for the Y receipts except that as to Bavarian Garden receipts she would put them in a different compartment of the safe because she thought that was the place to put them where Chisman would pick them up, and it was a different compartment from where she would put the Y's receipts for McKibben.

She left the Y to go to Alaska in the summer of 1979. She thought she had

reached the point where she could become the owner of an establishment. She learned through Frank Colacurcio --

THE COURT: Would you give me the date again?

MR. HELSELL: Summer of 1979, Your Honor.

She learned either through Frank Colacurcio or through a man named Stanford Poll, she understood Stanford Poll was the controlling shareholder in two topless places in Anchorage. It was sort of an inactive arrangement with a person whose name was Noel Weelfare, and that Noel Weelfare owned 17 and a half percent of the Booby Trap and the Wild Cherry.

She and Junior Pauole, with whom she was living, talked about it and decided they should try to go up there and each would run a place; that each would have one of these 17 and a half percent shares.

They talked some more about it and they decided she would be the day manager of the two places and Junior would be the night manager, because she was getting so she detested the night duty. So she left for Alaska in the summer of 1979 to try to acquire the interest in these places which Mr. Poll had assured her she could acquire. She had negotiations with Weelfare, I think, and he was willing. She was to pay for her position out of pocket.

She didn't last long up there. She said Alaska was too wild. Places were topless, bottomless, the customers were much wilder than the customers that frequented places down here, and she felt it was something that was too big for her and she decided she didn't want to get involved.

More to the point, she had a serious domestic problem because she was trying to take her son up there to become an Alaska

resident and she had an argument with her ex-husband and an actual court battle, and to avoid all of this she came back to Seattle and decided she couldn't get involved.

She did take Dan Kelly up there. She wanted some male whom she knew to be up there helping her and Junior Pauole couldn't leave when she was leaving. I don't think I would ask her to say this in court, but he had a problem with his parole board. They wouldn't let him go up until he was off parole and his parole didn't expire until December, 1979. She went up alone until Junior could there [sic] and took Kelly.

While Kelly was there in her presence, Stanford Poll gave $1,790 in receipts to put in the bank and then Mr. Poll suddenly was told by his bookkeeper that he was -- that he couldn't reconcile the cash. They were $1,790 short, and she reminded

him that was the deposit he had given to Kelly and Kelly admitted he had stolen $1,800 of Poll's money and promised to try to pay it back.

THE COURT: Did you ask Kelly about that?

MR. PARKER: Yes. He admitted it.

THE COURT: That's what I thought.

MR. HELSELL: I'm not sure he admitted it as the bank deposit detail, but he admitted he was accused of taking $1,800 and he did.

THE COURT: That's what I thought.

MR. HELSELL: So she is back in Seattle, back at the Y in the summer of 1979. She didn't last more than a month up there, I don't think.

THE COURT: Did you want to leave?

MR. HELSELL: I am almost through. Here come some of the most important things of all. She can say, number

one, she says Kelly's claim as to how he came to be transferred to the Bavarian Gardens or to the Y, and Your Honor will recall he said Frank came around and asked him if he was working this week, and he said no, he wasn't, and then Pam told him he had to go out to the Bavarian Garden this weekend.

THE COURT: The change was from the Y to the Bavarian Gardens?

MR. HELSELL: Right. Kelly said he worked the first three weeks at the Y and then suddenly was transferred to the Bavarian Garden, and the circumstances I just recited to Your Honor.

She says that's not true; that Kelly was a poor bartender and she had fired him at the Y. She later learned that Pauole had hired him at the Bavarian Garden, and she knows Frank didn't have anything to do with the shift of Kelly from the Y to the Bavarian Garden.

She will say with respect to testimony by Kelly that Frank Colacurcio was out giving orders around the Y, that that was not so; that Frank was there with some frequency because he used to stop there for a beer on his way home. He lives in the north end. She would ask Frank for advice about various things when he was there, and he would freely give it, such things as "If I were you, I would change the lights on the stage."

THE COURT: Is this at the Bavarian Gardens?

MR. HELSELL: At the Y, but Kelly was asked questions by the Government about Frank giving orders at the Y. She said what did happen is that when he would arrive, he was a big tipper and was known to the girls who danced, and he was a problem. The girls would all flock around him and wouldn't be dancing for other customers. But he was a heavy spender. He

would buy tables [sic] dances from the girls and tip heavily.

He was not running the Y and he was simply there quite frequently, and she was frequently getting his advice about this or that, but she was the manager and it was in that context.

She says with reference to Kelly, we all knew, meaning we people who knew Kelly, knew he was paid informant. He used to say he was. It wasn't a big secret, or at least there came a time when he said he was. She doesn't know how the information first got out, whether he had to be accused before he said it, but there was a time when everybody knew Kelly was a so-called snitch.

She said it didn't affect his job; that nobody took any action against him of any kind, and he continued working for more than a year after that knowledge was first

out as a bartender -- I guess two years, and nobody did anything about it.

She talked to Frank about it and Frank said he wasn't doing anthing wrong and there was nothing Kelly could find out, so what's the problem? I've got nothing to hide, were his words.

THE COURT: Let me interrupt you here. I think we had better move out in the courtroom. We can continue from there.

MR. HELSELL: Does Judge Solomon want to come in? I have about two more minutes.

THE COURT: I think Judge Solomon wants to go through his mail.

(The following proceedings occurred in open court in the absence of the jury:)

MR. HELSELL: Finally, Your Honor, Pam will say that after she had been

subpoenaed before the Grand Jury as a witness, I think on the first occasion, February of 1979, she said that she went and hunted up Frank and told him she had been in there as a witness and asked him what this was all about.

Lish tells me it was the second time she had been there. I suspect she talked to him after the first time. His answer was "They think I'm getting money from the taverns. I am, but there's no problem because I am putting it all on my own tax return and reporting all of it."

She will also say --

THE COURT: Would you wait just a moment?

MR. HELSELL: Mr. Whitson explains to me that I misstated something. I told Your Honor that she would say that Dan Kelly was fired by her and she had learned that Junior Pauole had hired him at the Bavarian Garden.

I think she will say that she learned that Belcher had hired him.

Finally, she is prepared to talk about the matters which Mr. Parker told Your Honor about, and I am not sure I would ask her this on direct. I probably would say nothing about it, but in making an offer of proof as to what I think she will say about the intimation by the U.S. Attorney about admitting to perjury, I think she will say that as to an inconsequential matter which involved a trip to California by Jackie Colacurcio and how it was financed, she went with Jackie Colacurcio to California; that she did not tell the entire truth in the first Grand Jury session; that as to the important matters that I have been talking to Your Honor about in this offer of proof for about the last half hour; that she told the exact truth as far as she is concerned and that her reason for saying what she did in the

Grand Jury about her trip to California with Jackie Colacurcio is that she knows how deathly afraid Jackie Colacurcio is of any publicity about anything she does.

THE COURT: Who is Jackie Colacurcio?

MR. HELSELL: Jackie is Frank's wife. For years she has been mortified by the publicity that swirls around the Seattle area about the Colacurcio family. She will never go anywhere where a picture might be taken.

Pamela wrongfully thought that if she told about the trip to California in a way which would implicate Jackie Colacurcio in anything, that it would cause Jackie embarrassment, and she and Jackie in the past have been very close friends. They have vacationed together in Hawaii. She regards herself, or did, as a close friend of Jackie's, and that was her concern.

She will also tell Your Honor she had learned that there had been a leak involving a court reporter in the Grand Jury, and she was convinced anything she might say would find its way out into the public place, eventually.

The reason she knew about the leak was that her daughter had been subpoenaed before the Grand Jury, and suddenly the statements that her daughter had made were being read back to her and to children in the school district where she lived, and she learned that the lady court reporter had indiscretely told some people about the Colacurcio investigation and what some witnesses were saying.

Anyway, by way of offer of proof, and in answer to what the Government says, she will say that is the only thing she did not tell the full truth about in the Grand Jury.